UNITED STATES PATENT AND TRADEMARK OFFICE

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68786 7590 10/29/2007	EXAMINER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

PTOL-90A (Rev. 04/07)

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>24 September 2007</u>.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-26* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-26* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)
2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.
5)☐ Notice of Informal Patent Application
6)☐ Other: _____.

DETAILED ACTION

This action is in response to the papers filed 9/24/2007. Claims 1-20 were
received for consideration.

Response to arguments

In response to applicant's argument that there is no suggestion to combine the
references, the examiner recognizes that obviousness can only be established by
combining or modifying the teachings of the prior art to produce the claimed invention
where there is some teaching, suggestion, or motivation to do so found either in the
references themselves or in the knowledge generally available to one of ordinary skill in
the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re
Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case both Soles and
Todd both have to do with a security assessment for assessing vulnerability. See Soles
column 2 lines 4-7 and 38-52 and Todd column 2 line 63 – column 4 line 4. Todd
teaches that his method of providing a security assessment for a particular host
provides the advantage of allowing the detection of vulnerability to denial of service
attacks (Column 3, lines 63 – Column 4, lines 5) and have included a time period to fix
security vulnerabilities (Column 7 lines 1-13). It would have been obvious to one of
ordinary skill in the art to use the additional security assessment of Todd for scanning a
host because it would allow the ascertaining of the vulnerability level of the host to
denial of service attacks to increase the security testing of the Soles system.

Applicant's arguments with respect to claims 1, 12, 23, and 25 that Soles fails to

teach security vulnerability have been fully considered but they are not persuasive.

Soles and Todd both disclose security vulnerabilities. Soles teach that the system of

evaluating the performance of a computer includes security vulnerabilities at column 2

lines 1-11 and column 8 line 63 – column 9 line 13. Todd also teaches a method of

providing a security assessment for a particular host the security vulnerabilities at

column 3 line 63 – column 4 line 4.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed
> or described as set forth in section 102 of this title, if the differences between the
> subject matter sought to be patented and the prior art are such that the subject
> matter as a whole would have been obvious at the time the invention was made
> to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was
> made.

Claims 1-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Soles et al. (US patent 6782421) and Todd Sr et al. (US patent 6185689).

With respect to claim 1, 12, 23 and 25, Soles teaches the method for providing

automated tracking of security vulnerabilities, comprising: using a computer device to

perform a security vulnerability assessment on a system (Column 2, lines 4-7, 37-67,

Column 8, lines 55 - column 9 line 13); storing data obtained from the security

vulnerability assessment in a security vulnerabilities database (Column 4, lines 47-64);

determining using a computer, a security vulnerability score based on a plurality of vulnerability factors identified by the vulnerability assessment (Column 5, lines 50-67 and column 6, lines 5-65). Soles fails to explicitly disclose determining a time to fix a security vulnerability identified by the security vulnerability assessment of the system based on the determined security vulnerability score. Todd discloses a method of assessing a particular host for security vulnerabilities in which he teaches determining a time to fix a security vulnerability identified by the security vulnerability assessment of the system based on the determined security vulnerability score (Column 7, lines 1-7). Todd teaches that his method of providing a security assessment for a particular host provides the advantage of allowing the detection of vulnerability to denial of service attacks (Column 3, lines 63 – Column 4, lines 5). It would have been obvious to one of ordinary skill in the art to use the additional security assessment of Todd for scanning a host because it would allow the ascertaining of the vulnerability level of the host to denial of service attacks.

With respect to claim 2 and 13, wherein determining the security vulnerability factor further comprises considering the frequency the identified security vulnerability occurs in the system (Figure 16, Column 7, lines 8-50 and Column 9, lines 35-45 i.e. the frequency of the identified vulnerability may gauged in monthly or other cycles)

With respect to claim 3 and 14, wherein determining the security vulnerability factor further comprises the criticality of an element in the system presenting the security vulnerability and a rating of the severity of the security vulnerability (Figures 17-20 23, Column 9, lines 45 – Column 10, line 17 i.e. the criticality of an element in the

system is the business risk associated with the vulnerability and how much of a threat it has to impacting users)

With respect to claim 4 and 15, Todd discloses the method of claim 1 further comprising determining an IP address associated with the security vulnerability (See Todd Column 5, lines 65-Column 6, lines 5 Column 4, line 55-65 and Column 8, line 5-20)

With respect to claim 5 and 16, Todd discloses the method of claim 4 further comprising entering the IP address and a description of the identified security vulnerability in a tracking database. (Column 7, line 55 – Column 8, line 66, Column 7, lines 18-25 and Column 5, lines 5-20)

With respect to claim 6 and 17, Soles et al. discloses the method of claim 1 further comprising determining delinquent security vulnerabilities based upon the determined time to fix the vulnerability identified by the security vulnerability assessment. (Column 7, lines 1-7 i.e. if the vulnerability is not fixed within a month, the service grade will drop).

With respect to claim 7 and 18, Soles et al. discloses the method of claim 6 further comprising providing notification of determined delinquencies (Column 7, lines 1-7).

With respect to claim 8 and 19, Todd Sr. et al. discloses the method of claim 6 further comprising re-running a scan profile when notification is received that the security vulnerability has been fixed (Column 7, lines 45-56).

With respect to claim 9 and 20, Todd Sr. et al. discloses the method of claim 8 further comprising determining whether the security vulnerability still exists and archiving records associated with the security vulnerability when the security vulnerability does not exist (Column 7, lines 45-56 where the determination if the vulnerability still exists would be made by rescanning the system, and results would be archived to a in hypertext report)

With respect to claim 10, 21, 24 and 26, Soles et al. discloses a method for determining a criticality factor for a security vulnerability in a computer system, comprising: Entering in a database security vulnerabilities identified during a security vulnerability assessment (Column 4, lines 47-64 the data drawn from the evaluation is stored in a database as an a metrics history). Monitoring a frequency of occurrence for the identified security vulnerabilities. (Column 9, lines 35-45) & (Figure 16). Assigning a security vulnerability factor to a security vulnerability based upon the frequency of occurrence of the security vulnerability in the system (Figures 17-20 23, and Column 9, lines 45 – Column 10, line 17)

With respect to claim 11 and 22, Soles et al. discloses the method of claim 10, wherein the assigning a vulnerability factor further comprises considering a criticality of an element in the system presenting the vulnerability and a rating of the severity of the vulnerability within the system (Figures 17-20 23 and Column 9, lines 45 – Column 10, line 17 the criticality of an element in the system is the business risk associated with the vulnerability and how much of a threat it has to impacting users).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time

policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later

than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Devin Almeida whose telephone number is 571-270-

1018. The examiner can normally be reached on Monday-Thursday from 7:30 A.M. to

5:00 P.M. The examiner can also be reached on alternate Fridays from 7:30 A.M. to

4:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Gilberto Barron, can be reached on 571-272-3799. The fax phone number

for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

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you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

DA

Devin Almeida
Patent Examiner
10/23/07

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